

Remarks

The following remarks are submitted to address the issues raised in the Office Action mailed April 14, 2004.

Claims 1-39 are pending in the present application.

Claims 25-38 were withdrawn from consideration by the Examiner after Applicants elected the compound of Example 9.

Claims 1, 2, 19-24, and 39 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which the Applicants regarded as the invention.

Claims 1, 2, 19-24, and 39 stand rejected under 35 U.S.C. § 103(a) as being obvious over US Pat. No. 5,703,092 to Xue et al.

Claims 3-18 were considered to be allowable by the Examiner but were objected to as being dependent on a rejected claim.

No new matter has been added. The foregoing rejections and other items in the Office Action are addressed in the following paragraphs. Consideration of the pending claims is respectfully requested in view of the following comments.

Claim Amendments

Claims 1 and 2 have been amended by adding the conjunction "and" between the definitions of "t)" and "u)".

Claims 3-18 have been amended by replacing --comprises-- with "is".

Claims 1, 2, 19-24, and 39 - 35 U.S.C. § 112, second paragraph

The rejection of claims 1, 2, 19-24 and 39 under 35 U.S.C. § 112, second paragraph, as being indefinite is respectfully traversed. Applicants have

amended claims 1 and 2 by adding the conjunction "and" between the definitions of "t)" and "u)".

Claims 1, 2, 19-24, and 39 - 35 U.S.C. § 103(a)

The rejection of claims 1, 2, 19-24, and 39 under 35 U.S.C. § 103(a) as being obvious over US Pat. No. 5,703,092 to Xue et al. is respectfully traversed.

In Applicants' previous response filed Jan. 2, 2004, claims 1 and 2 were amended to include the limitation "wherein at least one of R₅, R₆, R₇, and R₈ is -Y-C₁₋₆ alkylene-NR₁₃R₁₄." Contrary to the Examiner's statement, it would not have been obvious to one of ordinary skill in the art to modify the compounds having benzimidazole rings disclosed in Xue to include at least one group of the formula -Y-C₁₋₆ alkylene-NR₁₃R₁₄.

Xue does not provide any motivation to modify the compounds having benzimidazole rings to include at least one group of the formula -Y-C₁₋₆ alkylene-NR₁₃R₁₄. The more preferred compounds in col. 8, ll. 8-22, of Xue do not describe any embodiments containing a benzimidazole ring substituted with a group of the formula -Y-C₁₋₆ alkylene-NR₁₃R₁₄. The specifically preferred compounds in col. 8, ll. 23, through col. 9, ll. 30, and the 200 compounds in Tables 1-3 of Xue do not disclose any embodiments containing a benzimidazole ring substituted with a group of the formula -Y-C₁₋₆ alkylene-NR₁₃R₁₄.

As a result, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 2, 19-24, and 39 under 35 U.S.C. § 103(a) as being obvious over Xue.

Claims 3-18 - Objection

Claims 3-18 were considered to be allowable by the Examiner but were objected to as being dependent on a rejected claim. Claims 3-18 were also objected to for use of the term "comprises". Applicants respectfully traverse the objections to claims 3-18.

Claims 3-18 depend from claim 2 and ultimately depend from claim 1. As described above, Applicants have traversed each and every rejection of claims 1 and 2.

In claims 3-18, each use of the term --comprises-- has been replaced with "is".

Fees

This complete response is being filed within 2 months of the mailing of the Office Action on April 14, 2004. As a result, no fee is believed to be due.

Conclusion

In conclusion, Applicants request entry of the amendments, consideration of the Remarks, and passage of the application to issuance.

Respectfully submitted,

Date: June 9, 2004

By: Samuel B. Rollins
Samuel B. Rollins
Reg. No. 52,180

KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7432
(336) 734-2651
WINLIB01:1070323.3